IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3431 OF 2004

Ramakant @ Kantu Janu Yadav .. Applicant.
Vs.
State of Maharashtra .. Respondent.

Mr.Rajendra Shirodkar for the applicant.
Mr.V.B.Konde-Deshmukh APP for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 26TH AUGUST, 2004

P.C.:

. Heard Mr.Shirdokar, learned counsel for the applicant and Mr.Konde-Deshmukh, learned A.P.P. for the respondent.

2. The applicant has approached this court for being released on bail in C.R.No.311 of 2003 registered at Saki Naka police station under sections 302 read with 34 of Indian Penal Code. The applicant and two others are alleged to have committed murder of Shivaji Patil on 30.11.2003.

3. It is the prosecution case that on 30.11.2003 the deceased dipped dirty water mug with dirty hands in the drinking water drum kept by the

applicant in his tea stall which gave rise to the quarrel between the accused and the deceased. It is alleged that in the said quarrel there was hot exchange of words when the applicant brought sword from the stall and inflicted blows on person of the deceased. The other accused at the relevant time were holding the deceased. Mr.Shirodkar, learned counsel for the applicant after taking me through the statements of the witnesses and the judgments of this Court and the Apex Court submitted that even if the allegations of the prosecution against the applicant are taken as true, the case would not fall under section 302 of Indian Penal Code. According to Mr.Shirodkar, the crime was committed without premeditation and in a fit of rage upon sudden quarrel in which the applicant inflicted blows to the deceased. He further submitted that in the absence of premeditation and on account of total deprivation of self control but on account of heat of passion, the offence was committed which, normally a man of sober urges would not resort to. He placed heavy reliance upon the judgment of this court in **Krushna Radheshyam Nanhe Vs. State of Maharashtra 2004 ALL MR (Cri) 918**. This court in the report placed heavy reliance on the decision of the Apex Court in **AIR 2002 Supreme Court Page 1168**

(Sukhbir Singh Vs. State of Haryana). Mr.Shirodkar further submits that the applicant is petty businessman and was running a small tea stall. He does not have criminal antecedents at his credit and is in custody since last more than nine months. The other two accused have already been released on bail. On the other hand Mr.Konde-Deshmukh, learned A.P.P. submitted that the manner in which the deceased was assaulted by the sword, it is clear that the blows were inflicted with intention to kill the deceased. Though I do find force in the submissions of Mr.Shirodkar, learned counsel for the applicant I would not like to express any opinion at this stage whether the offence would ultimately fall under section 304 or under section 302 of Indian Penal Code. However, it is clear from the facts of the case that it was a sudden fight and in fit of rage the applicant assaulted the deceased. Keeping that in view and considering that the applicant does not have criminal antecedents I am inclined to enlarge him on bail.

. The applicant is directed to be enlarged on bail on his furnishing a personal bond of Rs.25,000/- with one or two sureties of the like

amount to the satisfaction of the trial court subject to the condition that he shall report the concerned police station on every Wednesday and Saturday between 6 pm and 7 pm for a period of four months and thereafter on every Saturday between 6 pm and 7 pm until the conclusion of his trial.

. While passing this order, I shall not be understood to have expressed any opinion on merits of the case. The trial court will deal with the case uninfluenced by the observations made in this order.

. The application is disposed of.

(D.B.Bhosale, J.)